

**ASSEMBLY BILL**

**No. 1588**

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**Introduced by Assembly Members Bass, Lieu, and Nava**

September 9, 2009

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An act to add Article 1.7 (commencing with Section 2946) to Chapter 2 of Title 14 of Part 4 of Division 3 of the Civil Code, relating to mortgage defaults, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 1588, as introduced, Bass. Monitored Mortgage Workout Program.

(1) Upon a breach of the obligation of a mortgage or transfer of an interest in property, existing law requires the trustee, mortgagee, or beneficiary to record in the office of the county recorder wherein the mortgaged or trust property is situated, a notice of default, and to mail the notice of default to the borrower named on the mortgage instrument. Existing law requires the notice to contain specified statements, including, but not limited to, those related to the borrower's legal rights, as specified.

This bill would establish the Monitored Mortgage Workout (MMW) Program that would be offered to all borrowers to provide them with an opportunity to explore options to avoid foreclosure. This bill would require that any notice of default of a residential real property, as defined, sent to a borrower include a notice of the borrower's right to participate in the MMW Program as well as the documents that authorize the borrower to elect to participate in the MMW Program. This bill would authorize the California Housing Finance Agency to administer the MMW Program.

This bill would provide that, if a borrower elects to participate in the MMW Program, no further action to foreclose upon the property may be instituted until the completion of the borrower's participation in the MMW Program.

(2) This bill would declare that it is to take effect immediately as an urgency statute.

Vote:  $\frac{2}{3}$ . Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

SECTION 1. Article 1.7 (commencing with Section 2946) is added to Chapter 2 of Title 14 of Part 4 of Division 3 of the Civil Code, to read:

Article 1.7 Monitored Mortgage Workout Program

2946. This article shall apply to notices of default sent, pursuant to Section 2924, to an owner of a residential real estate property.

2946.1. In addition to the information required to be included in a notice of default sent, pursuant to Section 2924, to a borrower of residential real property subject to this chapter, the notice shall also include all of the following:

(a) (1) A separate notice, entitled the Monitored Mortgage Workout Program (MMW Program), advising the borrower of the right to participate in a monitored mortgage workout program to explore options for the borrower to avoid foreclosure. This notice and all of the documents required to be included with the notice of default shall be printed in large bold font and shall be printed in English, Spanish, Chinese, Tagalog, and Korean. This separate notice shall be sent to the borrower and to all other persons that have an ownership interest in the residential real property.

(2) This separate notice shall explain the requirements for participation in the MMW Program and shall advise the borrower of the procedures that are to be followed to make an election to participate in the program.

(3) This separate notice shall include the name, address, telephone number, facsimile number, and e-mail address of two or more local housing counseling agencies that are approved by the United States Department of Housing and Urban Development.

1 The notice shall advise the borrower that private loan counselors  
2 are prohibited from collecting an advance fee.

3 (b) Three copies of an election form upon which the borrower  
4 may indicate his or her election to either participate in, or waive  
5 participation in, the MMW Program.

6 (c) Two separate envelopes, one addressed to the trustee and  
7 one addressed to the California Housing Finance Agency, for use  
8 by the borrower to advise the trustee and the agency of the  
9 borrower's election to participate in the MMW Program.

10 2946.2. For purposes of this article:

11 (a) "Agency" means the California Housing Finance Agency.

12 (b) "Borrower" includes a mortgagor, trustor, or owner of the  
13 residential real estate property described in the notice of default  
14 sent pursuant to Section 2924.

15 (c) "Residential real estate property" means residential real  
16 property consisting of one- to four-family dwelling units.

17 (d) "Trustee" means the lender, mortgagee, trustee, beneficiary,  
18 or authorized agent that filed the notice of default authorized by  
19 Section 2924.

20 2946.3. (a) If the borrower elects to participate in the MMW  
21 Program, the borrower shall complete the election form and mail  
22 a copy of the election to the trustee and to the agency not later than  
23 thirty calendar days after receipt of the notice of default. The  
24 election form shall be sent by certified mail, return receipt  
25 requested.

26 (b) Once a borrower has elected to participate in the MMW  
27 Program no further action may be taken to exercise the power of  
28 sale until completion of all sessions under the MMW Program.

29 2946.4. (a) The agency shall compile a list of qualified  
30 monitors to facilitate the MMW Program and shall make this list  
31 available on the agency's Internet Web site.

32 (b) In order to be eligible to be placed on the list of qualified  
33 monitors, an individual shall have a minimum of four years  
34 experience in real estate litigation, including experience as a  
35 mediator, and shall have received formal training, or be able to  
36 document professional experience with federal loan modification  
37 guidelines.

38 (c) A monitor shall be compensated for his or her services in  
39 an amount not to exceed seven hundred fifty dollars (\$750). The  
40 compensation shall initially be paid by the trustee and, in the event

1 that the mortgage loan is modified, the borrower shall reimburse  
2 the trustee for one-half of the total compensation paid to the  
3 monitor.

4 (d) The agency shall encourage the State Bar of California to  
5 allow mandatory continuing legal education program (MCLE)  
6 credits to those qualified monitors who are members of the  
7 California State Bar Association.

8 2946.5. (a) Upon receipt of a borrower's election to participate  
9 in the MMW Program the executive director of the agency shall  
10 select an individual from a list of qualified monitors to act as the  
11 monitor for the borrower and the trustee. The monitor shall contact  
12 the parties within 15 days of his or her appointment to schedule  
13 the first session of the monitored workout program.

14 (b) The executive director of the agency shall notify the trustee  
15 of the borrower's election to participate in the MMW Program  
16 within 15 days of the selection of the monitor. The trustee shall  
17 deposit a fee of two hundred fifty dollars (\$250) with the agency  
18 within 10 days of the executive director's notification of the  
19 borrower's election. In the event that the mortgage loan is modified,  
20 as part of the modification plan, the borrower shall be required to  
21 pay the lender one hundred twenty-five dollars (\$125) as partial  
22 reimbursement of this fee.

23 2946.6. The borrower is not eligible to participate in the MMW  
24 Program until the borrower has established a trust account with  
25 an FDIC-insured bank or credit union in an amount equal to 60  
26 percent of the monthly payment established under the mortgage  
27 agreement. The borrower shall make additional monthly deposits  
28 equal to 60 percent of the monthly payment established under the  
29 mortgage during the period that the borrower participates in the  
30 program. If the borrower fails to establish and maintain this account  
31 on or before the date of the first session of the MMW Program,  
32 the borrower's election shall be deemed to be canceled and the  
33 MMW Program shall be deemed to be completed for purposes of  
34 subdivision (b) of Section 2946.3.

35 2946.7. (a) The borrower shall bring all of the following  
36 documents to the first scheduled session of the MMW Program:

37 (1) Bank statements verifying the creation and maintenance of  
38 the trust account required by Section 2946.6.

39 (2) Tax returns filed for the prior tax year.

1 (3) Payroll verification for the previous two months from all  
2 family members of the borrower's household.

3 (4) Return receipts verifying the borrower's notice of election  
4 sent to the trustee and the agency as required by subdivision (a)  
5 of Section 2946.3.

6 (b) The borrower may be represented by a person with complete  
7 authority to bind the borrower, as evidenced by the borrower's  
8 written authorization for that person's representation.

9 (c) If the monitor determines that the borrower has failed to  
10 meaningfully participate in the MMW Program or has otherwise  
11 failed to act in good faith, the monitor shall issue a final report to  
12 all parties advising them that, based on the borrower's  
13 noncompliance, the MMW Program is deemed to be completed  
14 for purposes of subdivision (b) of Section 2946.3. If the borrower  
15 is able to demonstrate his or her ability to continue with the  
16 program within 10 days of the issuance of the final report, the  
17 monitor may rescind the final report and continue with the MMW  
18 Program sessions.

19 2946.8. (a) The trustee may be represented by a person with  
20 complete authority to bind the trustee, as evidenced by the trustee's  
21 written authorization for that person's representation.

22 (b) If the monitor determines that the trustee has failed to  
23 meaningfully participate in the MMW Program, has rejected a  
24 loan modification that satisfies loan modification guidelines  
25 currently in effect in this state, or has otherwise failed to act in  
26 good faith, the monitor shall notify the agency of this finding and  
27 the borrower shall be authorized to initiate legal proceedings in  
28 accordance with Section 2946.11. If the borrower initiates legal  
29 proceedings in accordance with Section 2946.11, the monitor shall  
30 prepare a loan modification proposal as required by Section  
31 2946.10.

32 2946.9. (a) The monitor shall use reasonable efforts to ensure  
33 that each MMW Program is completed within 60 calendar days  
34 of the monitor's appointment.

35 (b) The monitor shall be responsible for facilitating  
36 communications between the borrower and the trustee.

37 (c) All reports prepared by the monitor in conjunction with the  
38 MMW Program shall be subject to discovery under the Evidence  
39 Code.

(d) If the monitor fails to use reasonable efforts or fails to participate in good faith, the parties shall promptly notify the agency. If the agency determines that the monitor has failed to use reasonable efforts or has failed to participate in good faith, the agency shall appoint a new monitor to facilitate the MMW Program sessions.

2946.10. (a) At the conclusion of the MMW Program sessions, the monitor shall prepare a loan modification proposal that may include any or all of the following features:

(1) An interest rate reduction for a fixed term of at least five years.

(2) An extension of the mortgage term, not to exceed 40 years from the original date of the loan.

(3) Deferral of a portion of the principal amount of the unpaid principal balance until maturity of the loan.

(4) Reduction of the principal balance.

(5) Compliance with a federally mandated loan modification program.

(b) A copy of the loan modification proposal shall be distributed to the parties for agreement. If the borrower does not accept the loan modification proposal within 15 days of receipt, the borrower's election to participate in the program shall be deemed to be canceled and the program shall be deemed to be completed for purposes of subdivision (b) of Section 2946.3. If the borrower accepts the proposal, the terms of the proposal shall have immediate effect.

2946.11. If the trustee rejects the monitor's loan modification proposal or if the monitor has made a determination that the trustee has failed to meaningfully participate in the MMW Program, or has failed to act in good faith the borrower may institute an action in superior court seeking to enforce the monitor's loan modification proposal. The court shall enforce the terms of the loan modification proposal in an expedited proceeding, provided that the borrower's trust account, as required by Section 2946.6, remains current and the borrower has verified that his or her income is substantially the same as it was during the MMW Program sessions. The court shall award attorney's fees and costs to the prevailing party.

2946.12. If the borrower does not accept the loan modification proposal, the trustee may proceed with the foreclosure proceedings authorized by this chapter.

1     SEC. 2. This act is an urgency statute necessary for the  
2 immediate preservation of the public peace, health, or safety within  
3 the meaning of Article IV of the Constitution and shall go into  
4 immediate effect. The facts constituting the necessity are:

5     In order to stabilize and protect state and local economies and  
6 the housing market at the earliest possible time, it is necessary for  
7 this act to take effect immediately.